

Questions and Answers for the LPDES Final Pesticides General Permit October 31, 2011

1. What is the Pesticides General Permit?

A General Permit for discharges associated with the discharge of pesticides associated with the following four use categorizations: Mosquito and Other Flying Insect Pest Control; Aquatic Weed and Algae Control; Aquatic Nuisance Animal Control; and Forest Canopy Pest Control.

2. Are state permits required to be the same as EPA's Pesticide General Permit?

No, state permits are not required to be the same as EPA's Pesticide General Permit.

State permit writers are to evaluate information specific to the activities and areas covered under their state permits and in many instances, a state may determine that different requirements are appropriate in their state to meet the CWA and NPDES requirements.

3. Who is covered by the LPDES Pesticides General Permit?

The Pesticides General Permit primarily affects state, parish, and local pest control authorities, such as mosquito control districts, DOTD roadside weed control, utility rights-of-ways etc. The Pesticides General Permit provides coverage for discharges from commercial applicators.

4. Why are LPDES permits required for pesticide applications?

Section 301(a) of the Clean Water Act (CWA) prohibits any point source discharge of a pollutant to waters of the United States unless the discharge is in compliance with certain sections of the Act. Point sources are defined as "discrete conveyances including but not limited to any pipe, ditch, channel, or conduit from which pollutants are or may be discharged." One way a person may discharge a pollutant without violating the section 301 prohibition is by obtaining authorization from EPA to discharge under a section 402 National Pollutant Discharge Elimination System (NPDES) permit.

The requirement to obtain LPDES permits for point source discharges from pesticide applications to waters of the State stems from a recent decision by the Sixth Circuit Court of Appeals. In its ruling in January, 2009 on *National Cotton Council, et al. v. EPA*, the Court vacated EPA's 2006 rule that said NPDES permits were not required for applications of pesticides in, over or near U.S. waters when in compliance with the FIFRA label, and determined that pesticides are pollutants. Thus, point source discharges to waters of the State from the application of pesticides will require LPDES permits when the court's mandate takes effect.

5. How do I obtain coverage under the LPDES Pesticides General Permit?

You must apply pesticides in accordance with the FIFRA label. Certification and Licensing under Louisiana Department of Agriculture and Forestry (LDAF) regulations at LAC 7:XXIII, Subchapters F and H will provide coverage under the Louisiana Department of Environmental Quality's (LDEQ) Pesticides General Permit.

LDEQ's Pesticides General Permit requirements will be covered via LDAF certification and licensing. There will be no requirement for a Pesticides General Permit Notice of Intent (application) to be submitted to LDEQ.

6. How do I comply?

You must follow the requirements in the LPDES Pesticides General Permit. You must comply with all state pesticide regulations, statutes, FIFRA labeling, and other conditions listed in the PGP. Individual small applicator will continue to follow FIFRA label instructions. Commercial applicators will continue to follow LDAF rules. Non-commercial applicator will continue to follow LDAF rules. LDAF rules are embedded in the LPDES Pesticides General Permit. Please note the LPDES Pesticides General Permit lists Louisiana Department of Agriculture and Forestry (LDAF) regulations incorporated by reference.

7. Are there any differences between the LPDES Pesticide General Permit and LDAF regulations?

Yes there are 2 differences between the LPDES Pesticides General Permit and LDAF regulations. The record keeping requirements in the LPDES Pesticides General Permit require applicators/dischargers to keep records on site for period of **3 years**. LDAF regulations have a 2 year record retention requirement. The penalties for violating the LPDES Pesticides General Permit are up to \$25,000 per day. The penalties for violating LDAF regulations are \$5,000 per day.

8. Where can I obtain a copy of the LPDES Final Pesticide General Permit?

A copy of the LPDES Pesticide General Permit can be obtained at the following link:
<http://cms/portal/Portals/0/permits/lpdes/pdf/Pesticides%20General%20Permit.pdf>

9. What is the current status of the LPDES Final Pesticide General Permit?

The LPDES Pesticide General Permit was issued on October 31, 2011 with an effective date of October 31, 2011.

10. Who will issue the LPDES Pesticide General Permit?

LDEQ will issue the LPDES Pesticide General Permit.

11. When will LPDES permits be required for pesticide applications?

LPDES permits are required for discharges to Louisiana waters from pesticide applications as of October 31, 2011.

To provide background, the U.S. Department of Justice (DOJ) filed on April 9, 2009, on behalf of EPA, a motion to stay the issuance of the Court's mandate in order to provide EPA and NPDES-authorized states time to develop, propose, and issue final NPDES permits, and to provide outreach and education to the regulated community. The Court granted a two year stay, which meant that the mandate would issue on April 9, 2011 (i.e., NPDES permits would be required for discharges from pesticide applications beginning on that date). A second motion to stay the mandate until October 31, 2011 was filed on

March 3, 2011, which was granted by the Court on March 28, 2011. Thus, NPDES permits are not required for pesticide discharges to U.S. waters until October 31, 2011.

12. What other State Agencies are involved in the development of the Pesticides General Permit?

The permit was developed in coordination with the Louisiana Department of Agriculture and Forestry (LDAF). LDEQ and LDAF signed a Memorandum of Agreement (MOA) on January 13, 2011. The MOA outlines responsibilities of both agencies. A copy of the MOA can be obtained at the following link:

http://www.deq.louisiana.gov/portal/LinkClick.aspx?fileticket=rM_VTc2qjS8%3d&tabid=63

For more information on the EPA Master General Permit please see the following link:

<http://cfpub.epa.gov/npdes/pesticides/aquaticpesticides.cfm>